

BEFORE THE  
SURFACE TRANSPORTATION BOARD

TOTAL PETROCHEMICALS USA, INC.

Complainant,

v.

CSX TRANSPORTATION, INC; CAROLINA  
PIEDMONT DIVISION; GEORGIA  
WOODLANDS RAILROAD, LLC;  
MADISON RAILROAD; MOHAWK,  
ADIRONDACK & NORTHERN RAILROAD  
CORP.; NASHVILLE AND EASTERN  
RAILROAD CORP.; NEW HOPE &  
IVYLAND RAILROAD; PIONEER VALLEY  
RAILROAD; R.J. CORMAN RAILROAD  
COMPANY (MEMPHIS); SEMINOLE  
GULF RAILWAY L.P.; SEQUATCHIE  
VALLEY RAILROAD COMPANY; AND  
SOUTH BRANCH VALLEY RAILROAD

Defendants.

228553  
Docket No. NOR 42121

REPLY OF TOTAL PETROCHEMICALS USA, INC. TO THE  
MOTION OF NEW HOPE & IVYLAND RAILROAD TO DISMISS  
SECOND AMENDED COMPLAINT

TOTAL PETROCHEMICALS USA, INC. ("TPI"), pursuant to 49 CFR § 1104.13, hereby replies in opposition to the Motion to Dismiss filed by the New Hope & Ivyland Railroad ("NHRR") on December 9, 2010 in the above-captioned case. NHRR raises a number of issues to purportedly support the Motion, but these issues are variously irrelevant, incorrect, and/or insufficient to warrant dismissal. Not only is NHRR properly a defendant in this case, but NHRR is also a necessary defendant under governing law. Therefore, the Motion to Dismiss should be denied. In support hereof, TPI states as follows:

**I. BRIEF FACTUAL BACKGROUND.**

NHRR was joined as a defendant in this proceeding as the destination carrier for Lane 42, in Exhibit B to TPI's Second Amended Complaint ("Lane B-42"), which involves transportation of polystyrene pursuant to a joint rate from Effingham, Illinois to Warminster, Pennsylvania. The polystyrene originates on the Canadian National Railway ("CN") from TPI's Styrenics Complex in Carville, Louisiana. CN transports the polystyrene to Effingham, where interchange to CSX Transportation, Inc. ("CSXT") occurs. From Effingham, CSXT handles transportation to the Ivyland, Pennsylvania interchange with NHRR for final delivery to TPI's customer in Warminster. The challenged tariff only covers the movement from Effingham to Warminster because the CN portion of the route is pursuant to a transportation contract. See Verified Statement of Allen Cast at ¶ 10 ("Cast V.S."). {

}<sup>1</sup> Id. at ¶ 4.

TPI did not initially include NHRR as a defendant in this case, but in September 2010 CSXT informed TPI that NHRR is a line-haul carrier. See Exhibits 3-4 of TPI Motion for Leave to File Second Amended Complaint (filed Oct. 4, 2010). According to CSXT, NHRR and CSXT are in a "junction settlement" relationship whereby NHRR determines and has complete control over its portion of the challenged tariff rate. Id. Additionally, CSXT stated that NHRR has freedom to enter into a contract with TPI for its portion of the Effingham-Warminster movement. See CSXT Reply to TPI Motion for Leave to File Second Amended Complaint, at page 4-5 (filed Oct. 25, 2010). See also letter from CSXT counsel to the Board (filed Oct. 29, 2010).

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<sup>1</sup> Pursuant to the Protective Order in this proceeding, TPI has delineated "CONFIDENTIAL" information by single brackets { }, and "HIGHLY CONFIDENTIAL" information by double brackets {{ }}.

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Upon learning this fact, TPI contacted NHRR to express TPI's willingness to enter a transportation contract that would cover NHRR's portion of the Lane B-42 movement and thereby avoid the need to join NHRR as a defendant in this proceeding. However, NHRR rejected TPI's offer to enter into a contract, meaning that TPI had to add NHRR as a defendant in order to challenge the Effingham to Warminster tariff rate. Cast V.S. at ¶ 13-15. TPI filed its Second Amended Complaint on October 4, 2010 simultaneously with a Motion for Leave to File Second Amended Complaint. In a decision on November 19, 2010, the Board granted TPI's Motion for Leave.

**II. TRAFFIC HAS MOVED UNDER THE CHALLENGED RATE { .  
}**

NHRR claims that dismissal is warranted because, allegedly, no shipments on Lane B-42 have occurred since the challenged tariff went into effect on July 1, 2010. Motion to Dismiss at 3. This allegation is incorrect. {

} The inclusion of NHRR as a defendant is all the more appropriate because the Interstate Commerce Commission ("ICC") has previously held that railroads are properly defendants in rate disputes even if no traffic has moved. Nebraska State Railway Commission v. Alexandria & Western Railway Company et al., 113 ICC 467, 469 (1926) (ICC declares that "a complainant may rightfully assail, and we may properly condemn, unreasonable or otherwise unlawful rates regardless of their present use").

The existence of traffic under the challenged rate means that NHRR must be included as a defendant for any Board prescription to apply to both CSXT and NHRR, and for TPI to be entitled to reparations from both CSXT and NHRR, in the event the Board finds the rate in Lane B-42 to be unreasonable.

**III. AS A PARTICIPANT IN A JOINT-LINE RATE, NHRR IS A NECESSARY PARTY TO TPI'S COMPLAINT.**

**A. TPI Is Required To Include NHRR As A Defendant.**

Under Board precedent, TPI must include NHRR as a defendant in this case. In the Bottleneck cases, the Board stated that shippers challenging the reasonableness of joint or proportional rates “have generally been required to challenge the entire rate over a through route, and have not been permitted to challenge a discrete segment.” Central Power & Light Company v. Southern Pacific Transportation Company, 1 STB 1059, 1072 (1996) (“Bottleneck I”). See also Bottleneck II, 2 STB 235, 238 (1997) (Board states that, in Bottleneck I, “[w]e reaffirmed the principles of L&N<sup>2</sup> and Great Northern<sup>3</sup> that, when railroads establish common carriage through rates, shippers must challenge the reasonableness of the entire rate from origin to destination.”).

Given that TPI is seeking both reparations for past overcharges and prescriptive relief for future traffic, NHRR is also a necessary party under ICC precedent. Mayo Shell Corp. v. Chicago, Rock Island & Pacific Railroad, 293 ICC 243, 246 (1954) (carriers not named as defendants “would not be subject to any order prescribing new rates for the future in lieu of those assailed”). See also Louisville & Nashville Railroad v. Sloss-Sheffield Steel & Iron Co., 269 U.S. 217, 233 (1925). Therefore, each participant in an excessive joint rate is subject to an order

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<sup>2</sup> Louisville & Nashville Railroad v. Sloss-Sheffield Steel & Iron Company, 269 U.S. 217 (1925).

<sup>3</sup> Great Northern Railway Company v. Sullivan, 294 U.S. 458 (1935).

prescribing a lawful rate; a party not joined as a defendant would not be subject to prescriptive relief. The Board has recently required joinder of all parties against whom prescriptive relief is sought, acknowledging that it cannot impose an order on an absentee. Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc., STB Docket No. 42104, slip op. at 2 (n. 2) (served April 19, 2010) (quoting Ford Motor Company v. ICC, 714 F.2d 1157, 1160 (D.C. Cir. 1983) (“A tribunal which has jurisdiction over the subject matter of a claim generally may impose no dispositive order on an absentee, but it unquestionably has power to enter orders binding the parties it confronts.”)). See also Kentucky Gas Services, Inc. v. Southern Railway, 286 ICC 368, 369 (1952).

**B. NHRR’s Assertions Regarding Its Alleged Non-Involvement In The Challenged Tariff Are Incorrect And/Or Irrelevant.**

NHRR makes various claims regarding its purported non-involvement in the challenged tariff for Lane B-42. These claims are incorrect and/or insufficient to warrant dismissal of NHRR from the case.

First, NHRR claims it was not a party to and had no knowledge of contract negotiations that may have occurred between TPI and CSXT before and/or after the June 30, 2010 expiration of the prior contract. Motion to Dismiss at 2. The relevance of NHRR’s alleged knowledge, or lack thereof, of past contract negotiations is completely immaterial to the propriety of NHRR’s status as a defendant in this case. NHRR does not explain why this lack of knowledge would warrant dismissal and, indeed, it does not warrant dismissal. As a participant in the tariff for Lane B-42, NHRR is properly in this case. Unlike CN, which originates the traffic destined to Warminster in Lane B-42 under a contract with TPI, NHRR has not agreed to a contract; therefore, NHRR must remain a defendant.

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Second, NHRR claims that it “does not have a published or established public tariff rate...from...Ivyland to Warminster.” Motion to Dismiss at 2. As an initial matter, NHRR need not have a separate tariff to properly be a defendant in a rate reasonableness case. In fact, the Board made clear in the Bottleneck cases that all railroads participating in a through tariff movement must be joined as defendants. 1 STB at 1072-1073. See also Section III.A above. Thus, the lack of a separate NHRR tariff is irrelevant.

NHRR also claims that it did not provide “factors” to CSXT for the Lane B-42 tariff. Motion to Dismiss at 2. CSXT claims otherwise. All publicly available information shows that NHRR is a line-haul carrier for Lane B-42 that participates in a joint rate with CSXT. The CSXT website shows that NHRR is classified as a junction settlement carrier, not a switch or handling carrier. See attached Exhibit 1. Moreover, the CSXT tariff rate challenged by TPI in Lane B-42 lists the route of movement as “CSXT-IVYLD-NHRR.” See attached Exhibit 2. Again, this shows that NHRR participates in the line-haul movement.

On the same day that TPI served the Second Amended Complaint on the NHRR, TPI also served discovery requests on NHRR. These requests included Interrogatory Nos. 5 and 13, and Request for Production No. 5, which specifically asked for evidence regarding the relationship between NHRR and CSXT. In particular, the requests asked NHRR to define its relationship with CSXT, and to produce all documents that support NHRR’s view of its relationship. See attached Exhibit 3. If NHRR is truly not a participant in the challenged tariff for Lane B-42, then NHRR could and should have produced documentation supporting that alleged fact. However, instead of providing information and documents that would substantiate NHRR’s claims about its relationship with CSXT, NHRR has refused to produce anything in discovery. In fact, TPI has been forced to file a Motion to Compel responses from NHRR. Nor has NHRR presented

any facts in its Motion to Dismiss to demonstrate that it is not a line-haul carrier. If such facts were presented, TPI would gladly dismiss NHRR voluntarily. Given the complete lack of evidence from NHRR, the only information available to TPI to date shows that NHRR is a participant in the challenged tariff; thus, NHRR is properly a defendant in this case.

TPI understands that NHRR may be mistaken about its relationship with CSXT. In any event, TPI welcomes any evidence, agreements, or other documents that would definitively show that NHRR only provides switching or handling service (and not line-haul service), and does not have the ability to set its own portion of the tariff rate. If NHRR had cooperated with TPI's request for such evidence from the outset, rather than slam all doors of communication, NHRR's Motion to Dismiss may never have been necessary.

#### **IV. TPI HAS A CONTRACT WITH CN.**

NHRR also claims that dismissal of it as a defendant is warranted because CN participates in the transportation from TPI's Styrenics Complex but has not been included as a defendant. Motion to Dismiss at 3. This concern is a red herring.

CN's status in this proceeding is irrelevant to whether NHRR is a proper defendant. Moreover, CN is properly excluded due to the contract exception of the Bottleneck rules. Bottleneck I, 1 STB at 1074 ("when one of the components of service over the through route is embodied in a transportation contract, we cannot assess the reasonableness of the through route in its entirety"). Unlike NHRR, CN is not a party to the challenged tariff because a contract exists between TPI and CN for the transportation from the Styrenics Complex in Carville, LA to interchange with CSXT in Effingham, IL. See Cast V.S. at ¶ 10. This contract has an effective date of July 1, 2010, which immediately followed the expiration of the prior CSXT contract. Cast V.S. at ¶ 11. Given the existence of the CN contract, NHRR and CSXT are properly in the

case (and CN is properly excluded) for Lane B-42. Bottleneck I, 1 STB at 1074 (“we are without rate reasonableness jurisdiction over the rates of any rail transportation provided by contract”).

**V. TPI MUST INCLUDE LANE B-42 DUE TO THE BOARD’S PROHIBITION ON IMPROPER SEGMENTATION OF RATE CLAIMS.**

A recurrent theme throughout NHRR’s recent filings suggests that NHRR’s participation in this case is allegedly unwarranted by the level of traffic in Lane B-42 and the fact that NHRR is only involved in this case due to one lane. See, e.g., Motion to Dismiss at 1 (noting that NHRR participates in a “single lane”) and Reply to Motion to Compel (filed by NHRR on Dec. 23, 2010) at 3-4 (complaining about the cost of responding to discovery compared to the revenues earned by NHRR from Lane B-42). NHRR may be suggesting that the challenge to Lane B-42 should occur separately, outside the confines of a large stand-alone cost (“SAC”) case.<sup>4</sup>

Not only would such a separate challenge be inefficient, but it would also contravene the Board’s stated policy against disaggregating a “large dispute into multiple smaller disputes.” Simplified Standards for Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1), slip op. at 32-33 (served Sept. 5, 2007). TPI has a “large dispute” with CSXT regarding more than 100 rates. Under the Board’s aggregation rule, all contested rates must be combined in a single case. Moreover, under the Bottleneck rules and other precedent, any shortline railroads involved in the challenged tariffs must be included as defendants unless a separate contract exists. Therefore, as stated throughout this Reply, NHRR must be included as a defendant given that there is no contract between TPI and NHRR.

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<sup>4</sup> For example, NHRR may be implying that TPI should challenge the rate in Lane B-42 under the Three-Benchmark Method of Simplified Standards, as described in STB Ex Parte No. 646 (Sub-No. 1).



**VI. DISMISSAL IS NOT WARRANTED BY EITHER NHRR'S SIZE OR THE TIMING OF NHRR'S ADDITION TO THIS CASE.**

NHRR asserts that dismissal is also warranted because NHRR is a "small Class III carrier" and the timing of NHRR's joinder to this case is prejudicial. Motion to Dismiss at 2-3. Neither of these assertions are compelling.<sup>5</sup>

First, Congress made no distinction regarding railroad size when it enacted the statutes governing the reasonableness of rates. At no point has Congress stated that "small" railroads have dispensation to establish unlawful and unreasonably high rates with no possibility of rate regulation. Instead, the governing statute says merely that "[w]hen the Board, after a full hearing, decides that a rate charged or collected by a rail carrier for transportation subject to the jurisdiction of the Board under this part, or that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the maximum rate, classification, rule, or practice to be followed." 49 USC § 10704(a)(1).

Moreover, any cost to NHRR of defending its portion of the tariff rate can easily be avoided by entering into a contract with TPI. In fact, TPI offered to enter into a contract with NHRR for its portion of the movement even before TPI filed its Second Amended Complaint to add NHRR as a defendant. *Cast V.S.* at ¶ 14. NHRR expressed no interest in a contract, even though TPI made clear that, in the absence of a contract, TPI would have little choice but to join NHRR as a defendant. *Id.* at ¶ 15. Since filing the Second Amended Complaint, TPI has emphasized that it remains willing to enter into a contract with NHRR. *Id.* at ¶ 16. Yet, NHRR responded not by offering a contract rate but, instead, by filing the Motion to Dismiss. NHRR's

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<sup>5</sup> The proper time for NHRR to have challenged its joinder as a defendant was in opposition to TPI's Motion for Leave to File Second Amended Complaint. NHRR did not file any reply to TPI's Motion, and should be deemed to have waived its objections to joinder.

claim of burden simply is not credible when that burden is self-imposed by NHRR's refusal to even discuss a contract with TPI.

Similarly, the timing of NHRR's addition to this case does not warrant dismissal. NHRR claims that it is prejudiced by being added to this case after the end of Board-ordered mediation, but NHRR's own actions disprove any alleged "prejudice." NHRR's unwillingness to enter into or even discuss a contract with TPI shows that any mediation would be fruitless. Moreover, negotiations can always occur at any time, regardless of whether Board-mandated mediation is occurring. TPI remains ready and willing to discuss a contract with NHRR, but the Board should not condone NHRR's attempt to use mediation as a sword.

**VII. TPI WOULD BE HARMED BY FAILURE TO JOIN NHRR.**

Finally, NHRR incorrectly claims that TPI would not be harmed by dismissal of NHRR because there have been no shipments under the challenged tariff since June 30, 2010. Motion to Dismiss at 3. As shown above in Section II, NHRR is wrong on the facts; {

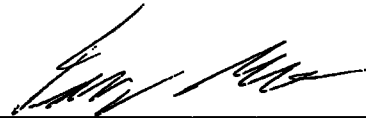
} Furthermore, TPI believes the entire challenged tariff rate for Lane B-42 is unreasonable, not just the CSXT portion of the rate. As such, both NHRR and CSXT must be included as defendants under the Board's decisions in the Bottleneck cases. 1 STB at 1072-1075. The obvious harm to TPI is in being forced to pay an unreasonable rate for transportation service. {

}

**VIII. CONCLUSION.**

Dismissal of NHRR is not warranted; indeed, as shown throughout this Reply, NHRR must be included as a defendant in this case. TPI respectfully requests that the Board deny the NHRR Motion to Dismiss.

Respectfully submitted,



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Jeffrey O. Moreno  
David E. Benz  
Thompson Hine LLP  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 331-8800

December 29, 2010

**PUBLIC VERSION—CONFIDENTIAL MATERIAL REDACTED**

**CERTIFICATE OF SERVICE**

I hereby certify that this 29th day of December 2010, I served a copy of the foregoing upon Defendants in the following manner and at the addresses below:

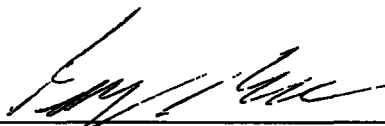
**Via e-mail and first-class mail to:**

<p>G. Paul Moates Paul Hemmersbaugh Sidley Austin LLP 1501 K Street, NW Washington, DC 20005</p> <p>pmoates@sidley.com phemmersbaugh@sidley.com</p> <p><i>Counsel for CSXT</i></p>	<p>Eric Hocky Thorp Reed &amp; Armstrong LLP One Commerce Square 2005 Market Street, Suite 1000 Philadelphia, PA 19103</p> <p>ehocky@thorpreed.com</p> <p><i>Counsel for New Hope &amp; Ivyland Railroad; Seminole Gulf Railway, LP</i></p>
<p>Louis E. Gitomer Law Offices of Louis E. Gitomer 600 Baltimore Avenue Suite 301 Towson, MD 21204</p> <p>Lou_Gitomer@verizon.net</p> <p><i>Counsel for Carolina Piedmont Division, South Carolina Central Railroad Company</i></p>	<p>Thomas J. Litwiler Fletcher &amp; Sippel LLC Suite 920 29 North Wacker Drive Chicago, IL 60606-2832</p> <p>tlitwiler@fletcher-sippel.com</p> <p><i>Counsel for Pioneer Valley Railroad Company, Inc.</i></p>
<p>David W. Lawrence Suite A 501 Park Avenue Lebanon, TN 37087</p> <p>davidlawrence@softekt.net davelawrence@birch.net</p> <p><i>Counsel for Nashville &amp; Eastern Railroad Corp.</i></p>	<p>Karl Morrell Ball Janik LLP Suite 225 1455 F Street, NW Washington, DC 20005</p> <p>kmorrell@dc.bjllp.com</p> <p><i>Counsel for Georgia Woodlands RR, LLC</i></p>
<p>Byron Clinton, General Manager Sequatchie Valley Railroad Company 2235 Fairfield Pike Shelbyville, TN 37160</p> <p>bclintonsqvr@bellsouth.net</p>	<p>David F. Rifkind Leonard, Street and Deinard Suite 800 1350 I Street NW Washington, DC 20005</p> <p>david.rifkind@leonard.com</p> <p><i>Counsel for Madison Railroad</i></p>

**PUBLIC VERSION—CONFIDENTIAL MATERIAL REDACTED**

**Via first class mail to:**

Joe Martin, Division Manager R.J. Corman Railroad Company (Memphis) P.O. Box 337 145 East 1st Street Guthrie, KY 42234	Lucinda K. Butler, Director South Branch Valley Railroad 120 Water Plant Drive Moorefield, WV 26836
Jeff Collins, General Manager Mohawk, Adirondack & Northern Railroad Corp. 1 Mill Street, Suite 101 Batavia, NY 14020	

  
\_\_\_\_\_  
Jeffrey O. Moreno

## **Exhibit 1**



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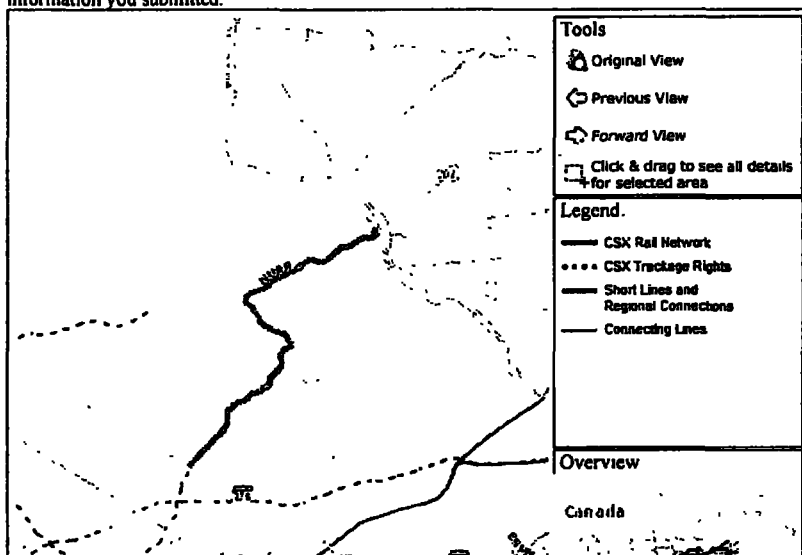
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#### Short Line Profile

**Shortline Code:** NHRR  
**Shortline Name:** New Hope & Ivyland Railroad  
**Website Address:** [www.newhope-railroad.com](http://www.newhope-railroad.com)  
**Contact Name:** Paul G. Nighini  
**Contact Phone:** 215-862-5240  
**Contact Fax:** 215-862-2150  
**Contact Address:** 32 West Bridge Street  
 New Hope, PA 18938  
**States Operating In:** PA  
**Junction Points:** PA Ivyland  
**Settlement Type:** Junction Settlement  
**Holding Company:** Independent

**CSX Contact:** Tony Globbie  
 856-778-5119

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## **Exhibit 2**



## Price Look-Up Results

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Price	Unit	Time	Vehicle	CSXT	MYLD	NHRR	Private	08/01/10
<input type="checkbox"/> \$9,345.00 Ⓢ	PER CAR	\$0 27 pm \$268.92*		CSXT28211	CSXT-MYLD-NHRR		Private	08/01/10

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For Customer Service, call 1-877-ShipCSX (744-7279) Option 5, Option 6

## Price Look-Up Results

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**AVAILABLE PRICES**  
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To view the price publications click (Ⓢ) next to the price.

Price	Unit	Time	Vehicle	CSXT	MYLD	NHRR	Private	08/01/10
<input type="checkbox"/> \$8,029.00 Ⓢ	PER CAR	\$0 27 pm \$269.19*		CSXT28211	CSXT Direct		Private	08/01/10

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For Customer Service, call 1-877-ShipCSX (744-7279) Option 5, Option 6

## **Exhibit 3**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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TOTAL PETROCHEMICALS USA, INC.

Complainant,

v.

Docket No. NOR 42121

CSX TRANSPORTATION, INC.;  
CAROLINA PIEDMONT DIVISION;  
GEORGIA WOODLANDS RAILROAD, LLC;  
MADISON RAILROAD (DIVISION OF CITY  
OF MADISON PORT AUTHORITY);  
MOHAWK, ADIRONDACK AND  
NORTHERN R. R. CORP.; NASHVILLE  
AND EASTERN RAILROAD CORP.; NEW  
HOPE AND IVYLAND RAILROAD;  
PIONEER VALLEY RAILROAD; R. J.  
CORMAN RAILROAD COMPANY  
(MEMPHIS); SEMINOLE GULF  
RAILWAY LP; SEQUATCHIE VALLEY  
RAILROAD CO.; AND SOUTH BRANCH  
VALLEY RAILROAD

Defendants.

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COMPLAINANT'S FIRST DISCOVERY REQUESTS  
TO SHORT LINE RAILROAD DEFENDANTS

Complainant Total Petrochemicals USA, Inc. ("TPI"), pursuant to 49 U.S.C. §§  
10701, 10704, 10707, 11701 and 11704, and 49 C.F.R. Part 1114.30, hereby submits its  
First Discovery Requests to Short Line Railroad Defendants. These requests are  
propounded upon all defendants in this case, except CSX Transportation, Inc. ("CSXT")

The defendants other than CSXT. are referred to as the "Short Line Defendants" or "Short Line" herein.

Responses to the TPI Discovery Requests and copies of responsive documents should be delivered to the offices of Thompson Hine LLP, 1920 N Street, N.W., Washington, D.C. 20036, by Monday, October 25, 2010, unless otherwise agreed by the parties. TPI is prepared to cooperate with the Short Line Defendants to facilitate the expeditious production of documents with the minimum practical burden.

### **I. DEFINITIONS**

The following defined terms are used herein:

1. "And," "or," and/or "each" shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each Interrogatory or Request all responsive information or documents which otherwise might be construed as outside the scope of the Interrogatory or Request. All use of the masculine gender shall be deemed to include the feminine.
2. "Bulk transfer facility" means sites for the transfer of commodities between rail and truck.
3. "Challenged Rate(s)" means the single line and AAR Accounting Rule 11 rate(s) for common carrier rail transportation service that are identified in Exhibits A and B to TPI's Second Amended Complaint in this proceeding.

4. "CMPA" means the Madison Railroad (Division of City of Madison Port Authority) and/or its subsidiaries and affiliates.

5. "Coal train" means any train that transports primarily loaded or empty coal cars, including a mine gathering or distribution run, a train carrying coal cars for more than one customer, train carrying coal cars from more than one origin to single or more than one destination on one bill of lading or other shipping document.

6. "CPDR" means the Carolina Piedmont Division and/or its subsidiaries and affiliates.

7. "CSXT" means CSX Transportation, Inc., its present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessors, parent and/or holding companies, subsidiaries, or any of them, and all other persons acting (or who have acted) on its behalf.

8. "Destination(s)" means any of the rail stations or facilities where TPI or its customers receives rail shipments of the commodities moving under the Challenged Rates or where Short Line interchanges TPI shipments to another carrier for continued movement towards the final destination.

9. "Distributed power" means a train configuration in which one or more locomotives are positioned at the front of the train and one or more locomotives are positioned at an intermediate point in the train and/or at the rear of the train, with the

intermediate or rear locomotives remotely controlled from the lead locomotive on the train.

10. "Document(s)" means all writings or visual displays of any kind, whether generated by hand or mechanical means, including, without limitation, photographs, lists, memoranda, reports, notes, letters, electronic mail, phone logs, contracts, drafts, workpapers, computer print-outs, computer tapes, telecopies, telegrams, newsletters, notations, books, affidavits, statements (whether or not verified), speeches, summaries, opinions, studies, analyses, evaluations, statistical records, proposals, treatments, outlines, any electronic or mechanical records or representations (including physical things such as, but not limited to, computer disks), and all other materials of any tangible medium or expression, in Short Line's current or prior possession, custody or control. A draft or non-identical copy is a separate document within the meaning of this term.

11. "Geocoded" means process or object data associated to an entity which is linked to a specific location or an array of locations on the Earth's surface through a standard geographic coordinate system.

12. "Geographic Coordinates" means latitude and longitude coordinates (in decimal values, with no decimal value truncation) associated to a named and standard geographic coordinate system, such as "North American Datum of 1927."

13. "GWRC" means the Georgia Woodlands Railroad, LLC and/or its subsidiaries and affiliates.

14. "Identify," when referring to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and/or recipient(s).

15. "Identify," when referring to information, means to list or produce documents containing the specified information.

16. "Local Train" means "Way train" as used in CSXT's R-1 Annual Report to the STB.

17. "MHLWA" means the Mohawk, Adirondack and Northern R.R. Corp. and/or its subsidiaries and affiliates.

18. "NERR" means the Nashville and Eastern Railroad Corp. and/or its subsidiaries and affiliates.

19. "NHRR" means the New Hope and Ivyland Railroad and/or its subsidiaries and affiliates.

20. "Origin(s)" means any of the rail stations or facilities where TPI originates rail shipments of the commodities moving under the Challenged Rates or where Short Line receives TPI shipments from another carrier.

21. "Person(s)" means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions or other legal entities, as the case may be.

22. "Possession, custody, or control" refers to and includes documents actually within the possession, custody or control of Short Line or any other person acting for or in concert with Short Line; and refers to and includes documents prepared by, obtained, or placed in the possession, custody, or control of any such person within the scope of his or her duties or relationship to Short Line; and further refers to and includes documents having been placed in the temporary possession, custody, or control of any third party by any of the foregoing or Short Line. Documents are deemed to be in the possession, custody, or control of Short Line if Short Line has the right to secure the document, or a copy thereof, from another person or entity, whether public or private, having such actual physical possession, custody, or control thereof.

23. "Price" or "prices" mean the price per railcar or other unit of measure, and whether it is f.o.b. or f.a.s. a railroad car, vessel, destination, port or other conveyance.

24. "PVRR" means the Pioneer Valley Railroad and/or its subsidiaries and affiliates.

25. "Rail yard" or "yard" means a railroad facility where a yard crew and/or locomotive has been assigned or a location with multiple tracks located side-by-side where Short Line performs the switching of cars.

26. "Related," "related to," and "relating to" mean and include making a statement discussing, describing, referring to, reflecting, explaining, analyzing, or in any way pertaining to, in whole or in part, the subject matter of the Interrogatory or Request.



27. "RJCM" means the R. J. Corman Railroad Co./Memphis Line and/or its subsidiaries and affiliates.
28. "Road Train" means "Through train" as used in CSXT's R-1 Annual Report to the STB.
29. "SARR States" means the States of Alabama, Delaware, Florida, Georgia, Indiana, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, New York, Ohio, Pennsylvania, North Carolina, South Carolina, Virginia, Tennessee, West Virginia, and the District of Columbia.
30. "SBVR" means the South Branch Valley Railroad and/or its subsidiaries and affiliates.
31. "Short Line" means any or all of the following named Defendant railroads: CMPA, CPDR, GWRC, MHLA, NERR, NHRR, PVRR, RJCM, SBVR, SGLR, and SQVR.
32. "SGLR" means the Seminole Gulf Railway LP and/or its subsidiaries and affiliates.
33. "SQVR" means the Sequatchie Valley Railroad Co. and/or its subsidiaries and affiliates.
34. "STB" means the Surface Transportation Board.

35. "TPI car(s)" or "TPI service" means the cars containing commodities moving under Challenged Rates moving to and from Origins and Destinations over the TPI route(s).

36. "TPI route(s)" means the railroad line segments over which Short Line moves loaded and empty railcars between Origins and Destinations.

37. "TPI shipment(s)" means the movements identified on Exhibits A and B to TPI's Second Amended Complaint.

38. "TPI train(s)" means the trains containing loaded or empty railcars moving to and from Origins and Destinations over the TPI route(s).

39. "You" or "your" means the Short Line answering these discovery requests.

## **II. INSTRUCTIONS**

Short Line is requested to conform to the following instructions in responding to these Requests and Interrogatories.

1. These Interrogatories and Document Requests call for all information, including information contained in documents that are in the possession, custody or control of Short Line.

2. Each paragraph shall operate and be construed independently. Unless otherwise indicated, no paragraph limits the scope of any other paragraph.

3. Where these discovery requests seek data in a computer-readable format or in its native format, this data is defined as an electronic file which contains structured,

relational data, and is managed within a commercially available and relational (32-bit) database system (for example Microsoft, Oracle, IBM) and is readable via commercially available and standard Microsoft Windows software API (Application Programming Interfaces) methods to include Open Database Connectivity (ODBC) implementations thereby making the data accessible independent of the host system.

If the source table is stored within a non-relational system, such as a 'flat file', or a custom system (not commercially available) provide the data in standard sequential or delimited text files. The text files will be MS-DOS or MS-Windows compatible text formats.

- a. For each computer file supplied provide:
  - i. The name and description of the source database or other file from which the records in the computer file were selected (stating whether the file is an original extract from a line of business transactional or data warehouse computer system, or if the provided file is an extract, or report, created specifically for this request) including a graphic or textural representation of the database relational model for each system to include all named tables of data within the system's relational model, along with each table's list of fields, primary keys, foreign keys, list relational links to other tables and fields, and filters, if any, associated to the relational links. Include all related tables, and all fields within each included table. List the fields which define a unique record (row) for each table, or state if the table does not require unique row differentiators. For code tables, provide the code, and associated data element in a discreet list (no duplicates);
  - ii. A description of how the records in the file produced were selected;

- iii. The original table names (no aliases), original field names, to match the provided systems' data structures within each computer program (in native software and text file) and intermediate file used in deriving the files produced if the files produced are flat files. If the files produced are commercially available relational database files, provide the method used and code (if code was created) used to export the data to this relational format, including the operating system and version which final text files or relational tables were produced; and
  - iv. A relational diagram defining relationships between tables, with all fields, listing primary keys, foreign keys, with each table or file provided as listed in the relational diagram. Also provide all table indexes, and index files, which define the index to be clustered or non-clustered.
- b. For each field in each computer database file provide a complete, standard data structure:
- i. The name of the field including its source table name, and if different from the LOB (line of business) or off-line analytical system field name, provide all field name incarnations so that there is a linkage between the provided fieldname and the original source fieldname and source table, and source application/system. Also provide the "Synonymous Name", that being a single word or multiple words that differ from the fieldname, but represents the same data element using alternative or more descriptive terminology. Also provide the "Context", that being a designation or description of the application environment in which the data item (or field) is applied or from which it is originally derived (its origin);
  - ii. The starting and ending positions of the field if the file is a non-delimited flat file, or if the file is delimited, verify that the delimiter is inserted at the end of each field and the delimiter is not contained, as data, within any data cell (provide row terminators and line feed codes), otherwise, if the provided data set is a relational database "table", export the table structure into a separate ANSI SQL 92 code or text file;

- iii. A detailed definition of the field and whether this field is the record's (or row's) unique identifier, or it is one of many fields which create a unique row (list them);
- iv. A detailed description of the data in the field, including an explanation of what they are used for and also provide all related index files in SQL code format, if any;
- v. The type of data in the field, i.e., whether numeric, character, alphanumeric, number of digits, number of significant digits, whether signed or unsigned (i.e., negatives allowed) and whether this field is Unicode, or contains any constraints, or requirements to be Non-Null, or non-blank;
- vi. If the values in a field are terms or abbreviations, a list of all terms or abbreviations used with detailed definitions of each and provide the approved domain (range of values if indeterminate) or list of values permitted if determinate. Also provide minimum and maximum values, including whether the values are Null, hidden, or specific ASCII or ISO codes. Include the character encoding or software vendor's code page, for each table if any;
- vii. An indication of whether the data in the field are packed or compressed; and
- viii. If the data in the field are packed or compressed, the type of packing or compression:
  - (1) Zoned with low-order sign;
  - (2) Binary with LSB first;
  - (3) Binary with MSB first;
  - (4) Packed with high-order sign;
  - (5) Packed with low-order sign;
  - (6) Packed with no sign; and
  - (7) Other (specify and provide detailed instructions for unpacking).

4. If an answer or the production of any responsive document is withheld under 49 C.F.R. § 1114.30(a)(1) on the basis of a claimed privilege or attorney work

product, then for each such answer or document, provide the following information: its date, type (e.g., letter, meeting, notes, memo, etc.), author (note if author is an attorney), addressee(s)/recipient(s) (note if addressee(s) or recipient(s) is an attorney), general subject matter, and basis for withholding the information.

5. If the answer to any Interrogatory or the production of any responsive document is withheld on claimed grounds other than privilege or attorney work product, state with specificity the basis for such withholding.

6. Short Line is requested to supplement its production in the manner provided in 49 C.F.R. Part 1114.29.

7. If a responsive document was, but is no longer in Short Line's possession, custody or control, describe what disposition was made of it.

8. Where knowledge or information in the possession, custody or control of Short Line is requested, such request includes knowledge, or information in the possession, custody or control of its employees, agents, representatives, and consultants.

9. Words in the singular include plural and vice versa

10. Dates are inclusive unless otherwise stated.

11. References to the present tense shall be construed to include the past tense, and references to the past tense shall include the present tense, as necessary to bring within the scope of each Interrogatory or Request For Production all knowledge or

information that might otherwise be construed to be outside the scope of the Interrogatory or Request For Production.

12. All documents should be produced or made available for inspection in the form in which they are retained by Short Line in its usual course of business (e.g., if the documents are in a file, the file containing the documents should be produced), unless otherwise agreed by TPI and Short Line. All files containing responsive documents should be identified by the file name and number.

13. All documents produced should be organized and numbered in such a manner that TPI may readily determine which documents are being produced in response to each specific Interrogatory or Request for Production. If no document is produced in response to any specific Interrogatory or Request for Production, please so indicate in the response.

14. If Short Line believes that any Interrogatory, Request for Production, definition or instruction is ambiguous, Short Line should set forth the language that it believes is ambiguous and the interpretation that it is using in responding to the Interrogatory or Request for Production.

15. If Short Line cannot answer any part of any Interrogatory or Request For Production in full, after exercising due diligence to secure the information to do so, Short Line should so state and answer to the extent possible, specifying its inability to answer

the remainder, and stating whatever information or knowledge it has of each unanswered part.

16. TPI reserves the right to file supplemental and/or follow-up Interrogatories, Requests for Production, and other discovery, as necessary or appropriate.

### **III. REQUESTS FOR ADMISSIONS**

#### **REQUEST FOR ADMISSION NO. 1**

Separately for each of the movements identified in Exhibit B to TPI's Second Amended Complaint in which Short Line participates, admit that Short Line faces no effective rail competition for the transportation of commodities under the Challenged Rates from Origins to Destinations.

#### **REQUEST FOR ADMISSION NO. 2**

Separately for each of the movements identified in Exhibit B to TPI's Second Amended Complaint in which Short Line participates, admit that Short Line faces no effective competition from other surface modes (e.g. truck, barge, pipeline) for the transportation of commodities under the Challenged Rates from Origins to Destinations.

### **IV. INTERROGATORIES**

#### **INTERROGATORY NO. 1**

If your response to Request for Admission No. 1 was anything other than an unqualified admission for each movement in Exhibit B to TPI's Second Amended



Complaint in which Short Line participates, for any such movement for which your response was not an unqualified admission, please identify the specific movement; identify the rail carrier(s) that provide effective rail competition; and describe the effective rail competition that Short Line claims exists for the transportation to which the Challenged Rate applies, the annual volume subject to such competition, and how and why such competition is effective.

**INTERROGATORY NO. 2**

If your response to Request for Admission No. 2 was anything other than an unqualified admission for each movement in Exhibit B to TPI's Second Amended Complaint in which Short Line participates, please identify the specific movement; identify any carriers that Short Line contends provide effective competition; and describe the effective competition from other surface modes that Short Line claims exists for the transportation to which the Challenged Rate applies, the annual volume subject to such competition, and why such competition is effective.

**INTERROGATORY NO. 3**

Please identify, by name, title and address, the person(s) who prepared each answer to these Interrogatories and each response to the foregoing Requests for Admissions, and who reviewed and selected the documents to be produced in response to each of the following Requests for Production.

**INTERROGATORY NO. 4**

Please provide a complete description of each TPI movement identified on Exhibit B to TPI's Second Amended Complaint in which Short Line participates from Origin to Destination and from Destination to Origin, including, but not limited to, (a) a description of all transportation-related activities at Origin, at Destination, and at all intermediate stations or other points between Origin and Destination; (b) the route(s) used; and (c) the miles for each route.

**INTERROGATORY NO. 5**

Please describe the arrangements between Short Line and CSXT regarding all movements handled in whole or in part by Short Line and including:

- a. Whether Short Line sets all rates, fees and surcharges, for its portion of the movement handled, and if not, identify who sets the rates, fees, and surcharges;
- b. Whether the Short Line revenues reported in the traffic and revenue data provided in response to Request for Production No.8 include or exclude the monies paid to CSXT as compensation for its portion of each movement;
- c. Whether a physical interchange of traffic takes place between Short Line and CSXT, and if so, identify the interchange location(s);
- d. Whether Short Line provides its own locomotive power for its portion of each movement or if CSXT power is used; and
- e. Whether Short Line provides its own train crew personnel for its portion of each movement or if CSXT train crew personnel are used.

**INTERROGATORY NO. 6**

Interrogatory No. 6 refers to the Short Line rail yards located in the SARR States.

- a. For each of the yards, identify the type of yard, i.e., electronically controlled hump yard or flat switch yard. Also identify the number of shifts

operated at each hump yard, and the average number of cars handled over each hump yard per day;

b. For each of the yards, describe the yard layout, yard signaling, yard switching, and the yard connection to mainline track;

c. For each of the yards which are hump yards, identify the average number of hazardous material cars handled at each yard on a daily basis that by-pass the hump;

d. For each of the rail yards, identify the scheduled switch crew assignments on a daily basis (including the name or designation of each assignment) and the respective duties of each assignment, e.g., switching job, bowl job, hump job, industrial job, etc.;

e. For each of the switch assignments identified in response to part d. above, please identify the typical number of switch crew members and the number and type of locomotives assigned to each switch service; and

f. For each of the switch assignments identified in response to part d. above, please state the typical number of hours worked by switch crews in performing their assigned tasks.

g. For each individual industrial switch job identified in response to part d, above, please identify the following information:

- i. The name or designation of each individual industrial switch job;
- ii. The typical number of crew members assigned to each identified industrial switch job;
- iii. Typical number and type of locomotives assigned to each identified industrial switch job;
- iv. The industries served by each identified industrial switch job; and
- v. The frequency of service of each identified industrial switch job.

h. Please identify each of the Local Trains that originate or terminate in each of the yards listed above and for each Local Train please identify the following information:

- i. Short Line's train identification or designation of each Local Train;

- ii. Typical number of crew members assigned to each identified Local Train;
- iii. Typical number of loaded and empty cars assigned to each Local Train;
- iv. Typical trailing length of each identified Local Train;
- v. Typical trailing weight of each identified Local Train;
- vi. Typical number and type of locomotives assigned to each Local Train;
- vii. The route of service for each identified Local Train, and if the Local or Road Train is a turn crew or straight-away crew;
- viii. The industries served by each identified Local Train; and
- ix. The frequency of service of each Local Train.

i. Please describe the security procedures employed at each of the Short Line rail yards.

**INTERROGATORY NO. 7**

Please describe how hazardous materials are handled by Short Line in each of the yards identified in response to Interrogatory No. 6, and specifically describe the procedures used by Short Line to classify railcars containing hazardous materials and if such classification occurs in a separately designated portion of the yards.

**INTERROGATORY NO. 8**

Please provide the maximum permissible gross weight on rail ("GWR") per railcar for each Short Line rail line segment in the SARR States. For all segments having a GWR less than 286,000 lbs. per railcar, please indicate the items and factors that limit the GWR for the identified segments.

**INTERROGATORY NO. 9**

**Please identify each scheduled Road Train operated by Short Line in the SARR**

**states and for each of the identified Road Trains, please identify the following:**

- a. Short Line's train identifier or designation of each identified Road Train and the beginning and end points served by each of the identified Road Trains;**
- b. State whether the crews are assigned or in pool service. Identify home and away-from-home terminals for each crew district;**
- c. The scheduled on-duty and off-duty locations for each crew assigned to the identified Road Trains;**
- d. The number of crew members typically assigned per shift to each of the identified Road Trains;**
- e. The number and type of locomotives typically assigned to each of the Road Trains;**
- f. The number and type of loaded and empty cars typically assigned to each of the Road Trains;**
- g. The trailing length for each of the identified Road Trains;**
- h. The trailing weight for each of the identified Road Trains;**
- i. The scheduled frequency of service for each identified Road Train; and**
- j. The scheduled time of departure and arrival at stations served by each of the identified Road Trains.**

**INTERROGATORY NO. 10**

**Please identify the locations and names of each bulk transfer facility located on**

**Short Line's rail lines in the SARR States, and provide the following information for each identified terminal:**

- a. Please describe the services Short Line provides at each bulk transfer facility;**

b. If Short Line does not provide services at any identified bulk transfer facility, please identify the entity that provides service at each bulk transfer facility;

c. Please describe Short Line operations at each of the identified bulk transfer facilities, including but not limited to:

- i. A description of each job assignment at each bulk transfer facility;
- ii. The number of shifts assigned per day for each job assignment, and;
- iii. The number of train crews assigned at each bulk transfer facility including a description of the services provided by each train crew.

d. For each identified bulk transfer facility, please state if it is located in a Short Line yard, and if so, please state if the bulk transfer facility is located in a distinct section of the yard and if it is serviced by yard locomotives identifier;

e. Please identify each Road Train by train identifier or train designation which serves each identified bulk transfer facility and the frequency of the service provided by each Road Train; and

f. Please identify the security procedures employed by Short Line at each identified bulk transfer facility.

#### INTERROGATORY NO. 11

Please describe in detail the computer program or processes used by Short Line to

create and/or update the following:

- a. Track Charts
- b. Valuation Maps
- c. Other Engineering and track design elements, including but not limited to
  - i. Track geometry measurement data;
  - ii. Geospatial or geographical data ("GIS");
  - iii. System track data by mile post, latitude and longitude including elevation, curves, turnouts, switches, signals, grade crossings, bridges, tunnels and other track data; and
  - iv. Track measurements.

**INTERROGATORY NO. 12**

Please state whether or not Short Line has information and/or data in a computer-readable format or in its native format for the following items (each subpart cross-references a Request for Production included herein):

- a. Operating Timetables (or the data identified in the timetables) [RFP #1]
- b. Station Lists [RFP #1]
- c. Station Books [RFP #1]
- d. Track Charts (or the data contained on the track charts) [RFP #1]
- e. Schematics of trackage at Origins [RFP #1]
- f. Schematics of trackage at Destinations [RFP #1]
- g. Mileage between railroad stations [RFP #1 and #12]
- h. Number of feet between mileposts [RFP #1]
- i. Operating Statistics and Density Data (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), number of trains, etc.) [RFP #6]
- j. Density [RFP #7]
- k. Rail line elevation [RFP #15]
- l. Curves [RFP #15]
- m. Communications signals [RFP #16]
- n. Yards [RFP #17]
- o. Track Input files for the RTC Model [RFP #19]
- p. Train Input files for the RTC Model [RFP #19]
- q. Form A and Form B files for the RTC Model [RFP #19]
- r. Output files for the RTC Model [RFP #19]
- s. Crew districts (including "from" and "to" stations, route miles and number of locomotives per train by train type) [RFP #27]
- t. Short Line freight cars [RFP #31]
- u. Short Line trailers and/or containers [RFP #32]
- v. Culverts [RFP #45]
- w. Tunnels [RFP #49]
- x. Bridges [RFP #51]
- y. Highway Crossings [RFP #56]
- z. Fences [RFP #62]

- aa. Geographic/Geospatial Information System ("GIS") [RFP #63 and Interrogatory #11]

**INTERROGATORY NO. 13**

Please state whether Short Line believes it is an agent of CSXT, or alternatively is a line-haul carrier that independently sets its own rates and divisions, for the TPI rail movements included in TPI's Second Amended Complaint. Describe all facts upon which you base your answer.

**V. DOCUMENT PRODUCTION REQUESTS**

**REQUEST FOR PRODUCTION NO. 1**

Please produce current operating timetables (including special instructions and/or operating rule books), station lists, station books, track charts and "condensed profiles" (including schematics which identify the division, subdivision, and ownership status (*i.e.*, whether railroad-owned or privately-owned) of the tracks at the Origins and Destinations), and any other document containing mileage figures and/or the feet between mileposts, which are applicable to Short Line's rail lines in the SARR States. Please provide the requested documents in machine-readable format to the extent available (including all necessary documentation). If current versions of any of the requested documents are not available, please produce the most recent versions that are available.

**REQUEST FOR PRODUCTION NO. 2**



For each bulk transfer facility located on Short Line's rail lines in the SARR states, please provide documents showing the track layout, the length of each track, the ownership of each track and descriptions of the existing facilities.

**REQUEST FOR PRODUCTION NO. 3**

For all locations in the SARR States where Short Line interchanges railcars and/or trains with another railroad, please provide documents that: (a) describe the interchange procedures at each location; (b) identify the tracks (and length of each track) used for interchange purposes; and (c) identify the ownership of each track used for interchange purposes.

**REQUEST FOR PRODUCTION NO. 4**

Please provide documents setting forth Short Line's policy on the construction of industrial tracks to serve customers, including, but not limited to, construction specifications and how costs for all track construction from the connection to Short Line track to the industry (including all turnouts ) is allocated between Short Line and the customer.

**REQUEST FOR PRODUCTION NO. 5**

Please produce copies of all documents, including agreements and/or understandings and all amendments and supplements thereto between Short Line and CSXT that refer or relate to the pricing and handling of all commodities, including but not limited to:

- a. Agreements or understandings pertaining to Short Line's payments from or to CSXT of a revenue factor, division, flat rate or other type of compensation for the railroad's portion of a movement;
- b. Locomotive run-through power or power sharing agreements or arrangements;
- c. Train crew run-through or train crew sharing agreements or arrangements;
- d. Any other agreements or arrangements pertaining to rates, surcharges, revenue sharing or operations; and
- e. Copies of all bills or invoices from 2008 to the present (including all supporting documents and data) rendered between Short Line and CSXT pursuant to each of the agreements and/or understandings produced in response to this Request for Production No. 5.
- f. Any documents that establish and/or govern the relationship between Short Line and CSXT for purpose of setting and collecting rates.
- g. Agreements evidencing, or documents related to, any Junction Settlement arrangement or understanding between CSXT and Short Line.

**REQUEST FOR PRODUCTION NO. 6**

For each Short Line rail line segment in the SARR States, please produce documents, in a computer-readable format to the extent available, which contain operating statistics and density data (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), number of trains, etc.) for all traffic by commodity for each year or partial year 2008 to the present.

**REQUEST FOR PRODUCTION NO. 7**

Please provide the following density information for Short Line's entire system for each year or partial year 2008 to the present in computer readable format to the extent available, including all record layouts, field descriptions, data definitions and data dictionaries/decoders required to use the data. The density information should include, at a minimum, the following data:

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment;
- b. Station name and SPLC at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail and track mileage for each unique density segment;
- e. ( i ) Total density (both directions including empty and loaded trains) by segment expressed in net ton-miles; or in the alternate, (ii) Short Line should provide total density (both directions including empty and loaded trains) by segment expressed in gross ton-miles plus appropriate factors that can be used to convert gross ton-miles to net ton-miles on each unique density segment; and
- f. Density information (i) for segments that Short Line utilizes via trackage rights (a joint facility or other joint use agreement) on another railroad and (ii) for segments where other railroads operate by trackage rights (a joint facility or other joint use agreement) over Short Line segments and identification of such densities that are included in the total densities provided in response to subpart e. above.

#### REQUEST FOR PRODUCTION NO. 8

Please produce the data bases, data warehouses and computer programs (with all documentation related to these data bases and computer programs), in a computer-

readable format, that include the information listed below for each movement handled by Short Line as originating, terminating, overhead or single-line carrier that traveled in any of the SARR States for each year or partial year 2008 to the present:

- a. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- b. Origin station and state;
- c. Destination station and state;
- d. The name of the customer, consignee, payee and shipper for each shipment record;
- e. For shipments that originated on Short Line's system, the date and time the shipment was originated;
- f. For shipments Short Line received in interchange, the on-junction station, state and Standard Point Location Code ("SPLC");
- g. For shipments Short Line received in interchange, the road received from;
- h. For shipments Short Line received in interchange, the date and time the shipment was interchanged;
- i. For shipments given in interchange, off-junction station, state and SPLC;
- j. For shipments given in interchange, the road given to;
- k. For shipments given in interchange, the date and time the shipment was interchanged;
- l. For shipments terminated on Short Line's system, the date and time the shipment was terminated;
- m. Origin Freight Station Accounting Code ("FSAC");

- n. Destination FSAC;
- o. Origin SPLC;
- p. Destination SPLC;
- q. Number of railcars;
- r. Number of intermodal containers/trailers
- s. Tons (Net);
- t. Railcar tare weight;
- u. Intermodal container/trailer tare weight;
- v. Total freight revenues from origin to destination, including any adjustments thereto, along with a description of the adjustment (i.e., add to or subtract from gross revenue);
- w. Short Line's share or division of the total freight revenues, including any adjustments thereto;
- x. Total revenues from surcharges (including but not limited to fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues and Short Line's division thereof provided in response to Subparts (v) and (w) above;
- y. The contract, agreement, tariff, pricing authority, etc. that the shipment is billed under, including the amendment and item numbers;
- z. Waybill number and date;
- aa. TOFC/COFC plan;
- bb. Car/trailer/container initial for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer initials);

- cc. Car/trailer/container number for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer number);
- dd. The train identification number of all trains used to move the shipment;
- ee. The number of locomotives, by train identification, by segment, used to move the shipment;
- ff. The total horsepower, by train identification, by line segment, used to move the shipment;
- gg. The total gross trailing tons, by train identification, by line segment, for all trains used to move the shipment;
- hh. The station, state and SPLC where the traffic was interchanged between trains;
- ii. Total loaded movement miles;
- jj. The predominant route of movement for each shipment on Short Line's system that is associated with the loaded movement miles;
- kk. Total empty movement miles;
- ll. Miles used to derive applicable fuel surcharges;
- mm. Applicable fuel surcharge rate;
- nn. Total loaded miles on Short Line's system;
- oo. Total empty miles on Short Line's system;
- pp. AAR car-type code; and
- qq. Provider of car and trailer/container (Short Line-owned, Short Line-leased, shipper, or foreign road).

**REQUEST FOR PRODUCTION NO. 9**

Please produce documents, in a computer readable format to the extent available, which contain complete information(including all events) tracking and describing car, locomotive and train movements for each car, locomotive and train moving on Short Line rail lines to, from or through the SARR States for each year or partial year 2008 to the present. Provide location information by station, state and SPLC.

**REQUEST FOR PRODUCTION NO. 10**

Please provide copies of the Short Line train dispatcher sheets (and the data recorded in such sheets in a computer readable format, to the extent available), or other documents (e.g., conductor wheel reports) that record train movement data in a computer readable format to the extent available, for all car and train movements and yard and hub operations on Short Line to, from or through the SARR States for each year or partial year 2008 to the present.

**REQUEST FOR PRODUCTION NO. 11**

Please provide all documents, including programs, decoders, and instructions, necessary to utilize, evaluate and link the data produced in response to Request for Production Nos. 8, 9 and 10. Please include with this production a description of the relationship between the databases (e.g., whether there is a 1:1 ratio between databases, or whether one can expect to link 100% of the records in one file to another file.) Please also indicate which data fields are common to (and may be used to link) the provided databases.

**REQUEST FOR PRODUCTION NO. 12**

Please provide the Short Line mileage chart and/or table-based mileage matrix and/or routing table that identifies the Short Line rail mileage between any two points on the Short Line rail system based upon a predominant or expected route of movement.

**REQUEST FOR PRODUCTION NO. 13**

Please produce all transportation contracts, including all amendments and supplements thereto (or letters of understanding with appendices or attachments), and all tariffs, common carrier pricing authorities or other documents containing common carrier rate and service terms (collectively "pricing authorities"), entered into, agreed to or established or provided by Short Line which govern shipments handled by Short Line as originating, terminating, overhead or single-line carrier to, from or through any of the SARR States in any of the years 2008 and beyond. For each pricing authority, please provide the traffic volumes and revenues associated with the movement of traffic under each pricing authority by traffic group (e.g., coal, ag, intermodal, etc.) and year for 2008 through the present.

**REQUEST FOR PRODUCTION NO. 14**

Please produce all forecasts and all documents related to forecasts or projections prepared by or for Short Line from 2008 through the present, or in Short Line's possession, of future traffic volumes and/or revenues for freight traffic by traffic group (including any breakdowns of any such forecasts or projections whether by commodity



classification, geographic region, line segment, or any other category) moving over any portion of the Short Line system located in any of the SARR States. Documents responsive to this request include, but are not limited to, traffic projections prepared in connection with engineering studies or authorization for expenditures or marketing studies or operating expense budgets or capital budgets or mergers with or acquisitions of other carriers.

**REQUEST FOR PRODUCTION NO. 15**

Please produce the following documents (in a computer-readable format to the extent available):

- a. Documents that show the rail line elevation and provide all information maintained by Short Line pertaining to those elevations including, but not limited to, division, subdivision, beginning milepost, ending milepost and elevation in feet above sea level for all Short Line rail line segments in the SARR states.
- b. Documents that identify all curves on the Short Line rail line segments in the SARR states and provide all information maintained by Short Line pertaining to those curves including, but not limited to, division, subdivision, beginning milepost, ending milepost and degree of curvature.

**REQUEST FOR PRODUCTION NO. 16**

Please produce documents (in computer readable format to the extent available) that identify and list the location and type of communications signals used for train operations by milepost, division, and subdivision on all Short Line rail line segments in the SARR states.

**REQUEST FOR PRODUCTION NO. 17**

**Please produce documents (in computer readable format to the extent available) that depict individual tracks, connections to the main line, turnouts, communications, signals and elevations for all yards on the Short Line system which are located in the SARR states.**

**REQUEST FOR PRODUCTION NO. 18**

**Please produce all documents related to unplanned track-related and operating-related incidents or outages that affected train operations from 2008 to the present in the SARR States. If the information requested would require a special study, please produce random failure, outage or incident reports or similar documents, as kept in the ordinary course of business by Short Line, from which the requested data could be extracted.**

**REQUEST FOR PRODUCTION NO. 19**

**Please produce any studies or analyses currently being conducted, or that have been conducted over the past three (3) years, which model and evaluate rail operations over the entire Short Line rail system or any portion of the Short Line system that are based on the Rail Traffic Controller ("RTC") model. In addition to the results of such studies or analyses, please provide the following RTC information:**

- a. Identify the version of the RTC computer model used in each study or analysis;**
- b. Provide all electronic input files required to run the RTC model including, but not limited to, track input files, train input files, Form A and Form B files; and,**
- c. Provide all electronic files generated as output from the RTC model for**

each study or analysis.

**REQUEST FOR PRODUCTION NO. 20**

Please provide documents, in a computer-readable format to the extent available, sufficient to show the projected and actual cycle times, and the standard or expected or contractual cycle time for each Short Line movement originating, terminating or passing through any of the SARR States for each year or partial year 2008 to the present.

**REQUEST FOR PRODUCTION NO. 21**

Please produce documents that contain the following information for each of the years 2008 to present:

- a. The location(s) where car inspectors inspect trains in the SARR States;
- b. A description of the procedures followed by the car inspectors in preparing for and inspecting the trains;
- c. The total number of car inspections per tour of duty (by day of the week) and the total number of trains inspected per tour of duty (by day of the week), separated between trainload and unit trains and other than trainload or unit trains, for each location identified in response to (a) above;
- d. The number of car inspectors inspecting each train at each location identified in response to (a) above and the time spent by each inspector during each inspection;
- e. The daily or hourly rates of pay, including all additives, for the inspectors identified in response to (d) above;
- f. The number of trains each car inspector identified in response to (a) above inspects during his tour of duty;

- g. The other duties performed by the car inspectors identified in response to (d) above while on duty and not inspecting trains;**
- h. The percentage of time the car inspectors identified in response to (d) above spend inspecting trains versus other assignments during their tour of duty;**
- i. The materials and supplies used by the car inspectors at each of the locations identified in response to (a) above;**
- j. The purchase price of each item identified in response to (i) above; and**
- k. The total number of trains and cars inspected at each location identified in response to (a) above.**

**REQUEST FOR PRODUCTION NO. 22**

**For each car inspection location identified in response to Request for Production No. 21, subpart a., please produce documents that demonstrate for each year 2008 to the present:**

- a. The number of cars inspected;**
- b. The number of cars which are considered "bad ordered" and sent to a repair track in the vicinity of the inspection location;**
- c. The number of cars which are considered "bad ordered" and required to be moved to a car repair facility; and**
- d. The time required to perform each inspection.**

**REQUEST FOR PRODUCTION NO. 23**

Please produce copies of all contracts/agreements with third parties (including but not limited to shippers or receivers) related to the performance of car inspection functions with respect to all trains traversing any portion of the SARR States for each year 2006 to the present.

**REQUEST FOR PRODUCTION NO. 24**

Please produce documents which provide the following information for all Short Line helper services operated in the SARR States, separately for each helper service location, for each year or partial year 2008 to the present:

- a. "From" and "To" stations, SPLC's and mileposts where trains are actually helped;
- b. Number and type of locomotives (model and horsepower) involved per help;
- c. Round-trip mileage each locomotive travels per help;
- d. Number of total trains helped per crew assignment;
- e. Minimum train size/weight requiring helper service; and
- f. Crew size per crew assignment.

**REQUEST FOR PRODUCTION NO. 25**

Please produce the train list(s) and train profile(s) showing the scheduled horsepower per ton ("HPT") for all trains operating to, from or within the SARR States. If the train list(s) or train profile(s) are not available, please provide other documents sufficient to show the scheduled HPT for the trains identified above.

#### **REQUEST FOR PRODUCTION NO. 26**

**Please produce copies of the following documents:**

- a. Documents which identify the locomotive tonnage ratings (*e.g.* horsepower per trailing ton) by line segment for Short Line's rail lines in the SARR States; and**
- b. Tractive effort tables or other documents sufficient to show the tractive effort produced by the locomotives used to transport trains through any portion of the SARR States.**

#### **REQUEST FOR PRODUCTION NO. 27**

**Please produce documents or data, in a computer-readable format to the extent available, which provide the following information for each crew district in the SARR States:**

- a. Each crew district identified by "from" and "to" stations;**
- b. The route miles in each such crew district; and**
- c. The number of locomotive units per train by train type (*i.e.*, coal, general freight, etc.) and the extent to which the locomotive units are in a distributed power train configuration;**

#### **REQUEST FOR PRODUCTION NO. 28**

**For each Short Line rail yard referred to in Interrogatory No. 6, please produce documents sufficient to identify switch crew assignments, hump crew assignments, Local Train assignments, the number of cars handled over each hump yard per day and the number of hazardous material cars handled at each hump yard per day which by-pass the hump operation at each yard.**

**REQUEST FOR PRODUCTION NO. 29**

Please produce all documents prepared from January 1, 2003 to date related to any planned capacity enhancements or capital improvements on Short Line's rail lines in the SARR States, including, but not limited, to documents containing estimated or actual construction costs and documents related to changes in rail rates or rail pricing strategy, in connection with any such plans.

**REQUEST FOR PRODUCTION NO. 30**

Please produce the following for all joint facility or joint use agreements (including, but not limited, to trackage rights agreements, joint or common ownership agreements and lease agreements and any amendments thereto) between Short Line and any other rail carrier or other entity applicable to any of the Short Line's rail lines and/or facilities in the SARR States:

- a. Copies of all agreements (including all amendments and supplements);
- b. Copies of all bills from 2008 to the present (including all supporting documentation and data);
- c. The Short Line density over the joint facility for 2008 to the present; and,
- d. The density of all other rail carriers or entities over the joint facility for 2008 to the present.

**REQUEST FOR PRODUCTION NO. 31**

Please produce documents for each year or partial year 2006 to the present that contain the following, in a computer readable format, for each freight car purchased or leased by Short Line (including freight cars currently on order and privately-owned freight cars leased by Short Line that maintain the private owner=s car initial and number):

- a. Initial and number;
- b. Manufacturer;
- c. Lessor, if leased;
- d. AAR car type;
- e. Tare weight;
- f. Purchase or order date, if purchased;
- g. Lease or order date, if leased;
- h. Total purchase price, if purchased;
- i. If leased, the type of lease (e.g., capital, operating, etc.) and term;
- j. If leased, the amount and frequency of lease payments;
- k. If purchased, the AFE applicable to each purchased freight car; and
- l. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

**REQUEST FOR PRODUCTION NO. 32**

Please produce documents for each year or partial year 2006 to the present that contain the following, in a computer readable format, for each trailer (chassis) or container



purchased or leased by Short Line (including trailers/containers currently on order and privately-owned trailers and containers leased by Short Line):

- a. Initial and number;
- b. Lessor, if leased;
- c. Tare weight;
- d. Purchase or order date, if purchased;
- e. Lease or order date, if leased;
- f. Total purchase price, if purchased;
- g. If leased, the type of lease (e.g., capital, operating, etc.) and term;
- h. If leased, the amount and frequency of lease payments;
- i. If purchased, the AFE applicable to each purchased trailer or container; and
- j. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

**REQUEST FOR PRODUCTION NO. 33**

Please produce for each year or partial year 2008 to the present documents (in a computer readable format to the extent available) which show for each Short Line individual locomotive engineer, conductor, dispatcher and equipment inspector, the number of shifts worked per year, their length of employment, and their annual compensation.

**REQUEST FOR PRODUCTION NO. 34**

Please provide documents sufficient to show Short Line's existing maintenance-of-way plan and staffing in the SARR States including the maintenance-of-way districts

and/or crews employed by Short Line to maintain the (a) track, (b) signals and communications facilities, (c) bridges and (d) all other facilities and structures in the SARR States, the number of Short Line employees by job classification presently assigned to each maintenance-of-way district or crew on both a permanent and a seasonal basis, and any changes in the maintenance districts, crews, and number and classification of employees that have occurred since January 1, 2003.

**REQUEST FOR PRODUCTION NO. 35**

For maintenance of way (including inspection of bridges, tunnels and highway crossings) and/or construction of or on Short Line rail lines in the SARR States performed by contractors for the period from 2007 to the present, please produce copies of all bills for services, documents which contain a description of the line location of the contract inspection, repairs (including vegetation control, rail grinding and other maintenance items) and/or construction, and the details of the work performed, including labor and materials. If Short Line does not maintain copies of any of these documents, produce whatever documents Short Line does maintain or has available to it describing the costs incurred by Short Line and the details of the work performed, in a computer readable form if applicable (including all necessary documentation).

**REQUEST FOR PRODUCTION NO. 36**

Please produce documents showing the ad valorem taxes that Short Line paid for each year 2008 to the present to each of the SARR States, together with documents

showing the total route-miles and total track-miles Short Line owned or owns in the SARR States for each year 2008 to the present. Also, produce documents showing how the amount of ad valorem taxes due were calculated by state in each year.

**REQUEST FOR PRODUCTION NO. 37**

Please produce documents sufficient to show the location, size (including square footage, number and lengths of tracks, capacity, etc.), components (such as equipment and machinery), original cost and year built for each facility located on any portion of Short Line's system in the SARR States that falls within each of the following categories of facilities:

- a. Roadway maintenance facilities;
- b. Locomotive maintenance facilities;
- c. Locomotive servicing facilities;
- d. Administrative facilities;
- e. Rail yards;
- f. Dispatch centers;
- g. Freight car repair and maintenance facilities;
- h. Scales;
- i. Wastewater treatment plants;
- j. Snowshed facilities;
- k. Train, yard and engineman facilities;

- l. Automotive Distribution Centers;**
- m. Intermodal terminals and yards;**
- n. River transload facilities; and**
- o. Lake transload facilities.**

**REQUEST FOR PRODUCTION NO. 38**

**Please provide for each year 2008 to the present for each facility identified in response to Request for Production No. 37, subparts (l), (m), (n) and (o):**

- a. The annual costs to operate each facility separated by function; and**
- b. The annual throughput of each facility (e.g., containers, trailers, carloads, etc.).**

**REQUEST FOR PRODUCTION NO. 39**

**Please produce all documents relating to any contribution or payment by any governmental or quasi-governmental entity (including, without limitation, AMTRAK) for construction, upgrading and/or maintenance of any Short Line track, facility or structure (including bridges, at-grade highway crossings and grade separated crossings) and/or operating expenses on any of Short Line's rail lines located in the SARR States.**

**REQUEST FOR PRODUCTION NO. 40**

**Please produce copies of the most current land valuation maps for Short Line rail lines located in the SARR States, and all documents (including but not limited to deeds or other instruments of grant or conveyance) related to the parcels identified on those maps.**

#### **REQUEST FOR PRODUCTION NO. 41**

Please produce documents identifying all donated rights of way and/or land grants (including easements) obtained by Short Line or Short Line's predecessors in connection with the construction of any rail lines or facilities located in the SARR States. The documents provided should include the following for each donated or easement land parcel:

- a. The Short Line parcel number;
- b. The exact location of the parcel, including county and state;
- c. Valuation section and map number;
- d. Original railroad acquiring the parcel;
- e. Type of instrument and/or title, e.g. easement, right-of-way deed, quit claim deed, condemnation, grant, etc.
- f. The size of the parcel in square feet or acres;
- g. The date of the transaction;
- h. The names of the parties to the transaction; and
- i. Any dollar amount associated with the transaction.

#### **REQUEST FOR PRODUCTION NO. 42**

Please produce all of Short Line's price list books governing prices for construction and maintenance materials (including but not limited to weights of rail from 115 lb to 141 lb, turnouts, ties, fasteners, lubricators, plant and field welds, fencing, roadway signs, track geometry cars, hot bearing and dragging equipment detectors, and related tools), or other documents utilized by Short Line's engineering personnel for

estimating costs of maintenance and construction projects for each year or partial year 2007 to the present. To the extent that the charges for transportation and delivery of materials are not included in the prices shown, please produce documents sufficient to show such charges for all materials.

**REQUEST FOR PRODUCTION NO. 43**

Please produce documents sufficient to show the following with respect to grading construction activities undertaken or proposed at any time, or currently ongoing, on any portion of Short Line's system located in SARR States:

- a. Number of cubic yards of excavation of:
  - i. Common earth;
  - ii. Loose rock;
  - iii. Solid rock; and
  - iv. Unclassified material;
- b. Number of cubic yards of embankment of:
  - i. Common earth;
  - ii. Loose rock;
  - iii. Solid rock; and
  - iv. Unclassified material;
- c. Number of cubic yards of borrow of:
  - i. Common earth;
  - ii. Loose rock;
  - iii. Solid rock; and
  - iv. Unclassified material;
- d. Grading construction data for each construction specification measured by Short Line including without limitation, roadbed width, side slope ratio, track center distance, presence of access roads, impact of grading activities on right-of-way width, use of geotextiles, use of water, soil stabilization, and width and depth of side ditches;

- e. Number of route miles, separated between single track main, double track main, triple track main, etc., corresponding to the cubic yard information described in paragraphs (i) through (iv) of Subparts (a), (b) and (c) of this Request;
- f. Number of track-miles corresponding to the cubic yards in paragraphs (i) through (iv) of Subparts (a), (b) and (c) of this Request;
- g. All of the different types of equipment (and the associated tasks) used to:
  - i. Excavate common earth;
  - ii. Excavate loose rock;
  - iii. Excavate solid rock;
  - iv. Excavate unclassified material; and
  - v. Obtain borrow material;
- h. Linear feet of pipe installed for lateral drainage;
- i. Number of cubic yards of rip rap placed for the protection of the roadway;
- j. Location, type and quantity of retaining walls;
- k. Construction method, including but not limited to the number of cubic yards of masonry or other similar material, used for retaining walls;
- l. Number of acres cleared;
- m. Number of acres grubbed; and
- n. Number of acres seeded.

**REQUEST FOR PRODUCTION NO. 44**

To the extent Short Line incurred any of the following expenses during the years 2007 to the present, please produce documents sufficient to show the costs Short Line incurred during each year for the following:

- a. Cost per cubic yard of excavation for:
  - i. Common earth;

- ii. Loose rock;
  - iii. Solid rock; and
  - iv. Unclassified material;
- b. Cost per cubic yard of embankment for:
  - i. Common earth;
  - ii. Loose rock;
  - iii. Solid rock; and
  - iv. Unclassified material;
- c. Cost per cubic yard of borrow for:
  - i. Common earth;
  - ii. Loose rock;
  - iii. Solid rock; and
  - iv. Unclassified material;
- d. Cost per cubic yard of rip rap (installed), separated between material and labor;
- e. Unit cost for each material type used for retaining walls, separated between material and labor;
- f. Cost per acre for clearing timber and any credits reflecting the sale of timber;
- g. Cost per acre for grubbing;
- h. Cost per acre for seeding;
- i. Cost per acre for weed spray (including necessary chemicals);
- j. Cost per acre or per mile for brush cutting; and
- k. Cost per square yard for geotextile fabric.

**REQUEST FOR PRODUCTION NO. 45**

Please produce documents sufficient to show culvert/drainage pipe locations (*i.e.*, railroad milepost), size (diameter), length, height of cover, number of tracks crossed,



type, and cost of material and installation for each, for Short Line's rail lines located in the SARR States.

**REQUEST FOR PRODUCTION NO. 46**

Please produce documents sufficient to show the following information with respect to ballast and sub-ballast used on Short Line's system for each of the years 2007 to the present:

- a. The average cost per cubic yard for ballast, by type;
- b. The average cost per cubic yard for the transportation and handling of ballast;
- c. The average length of haul represented by the value(s) in subpart (b) above;
- d. The average cost per cubic yard for sub-ballast, by type;
- e. The average cost per cubic yard for transportation and handling of sub-ballast;
- f. The average length of haul represented by the value(s) in Subpart (e) above;
- g. The names and locations of all quarries supplying such ballast or sub-ballast; and
- h. The unit prices from all quarries listed in response to Subpart (g).

**REQUEST FOR PRODUCTION NO. 47**

Please produce documents sufficient to show the following for each construction and rehabilitation project which exceeded \$100,000 in cost and was completed by Short Line, or an outside contractor acting on Short Line's behalf, since January 1, 2007:

- a. The date the project was started;

- b. The date the project was completed;
- c. Whether the project was new construction or rehabilitation;
- d. Whether or not the project was performed "under traffic", i.e., traffic continued to move through the construction area;
- e. A complete copy of the Authorization for Expenditure ("AFE") and description of all columns and data contained with the AFEs;
- f. A complete copy of the Roadway Completion Report or any successor document; and
- g. All invoices underlying each AFE and/or Roadway Completion Report.

**REQUEST FOR PRODUCTION NO. 48**

Please produce documents, including but not limited to AFEs, construction plans, engineering estimates, bid tabs, contractor invoices, and construction specifications for any projects that a carrier other than Short Line has undertaken in the SARR States since January 1, 2007 for which Short Line paid for some or all of the project.

**REQUEST FOR PRODUCTION NO. 49**

Please produce documents sufficient to show the following information for each tunnel located on any portion of the Short Line system in the SARR States:

- a. Location, i.e., line segment name and number;
- b. Beginning and ending mileposts;
- c. Length (in feet);
- d. Height above the rail (in feet);

- e. Number of tracks in the tunnel;
- f. Method, time period and cost of construction; and
- g. Maintenance costs for each year or partial year 2007 to the present.

**REQUEST FOR PRODUCTION NO. 50**

Please produce documents sufficient to show the tunnels or former tunnels located on Short Line's system in the SARR States that have been constructed or removed (by daylighting or other means) by Short Line since 2000, detailing location (line segment and milepost), length, number of tracks in the tunnel, method and time period of construction, and the cost per linear foot to construct or remove the tunnel. If no cost data is available for any such tunnels, please produce documents sufficient to show the cost per linear foot of any tunnel construction or removal performed anywhere on Short Line's system since 2000.

**REQUEST FOR PRODUCTION NO. 51**

Please produce bridge lists or other documents detailing the following information for all bridges located on Short Line's system in the SARR States:

- a. Location (milepost, division and subdivision);
- b. Type;
- c. Number of tracks;
- d. Total length;

- e. Number of spans;
- f. Type(s) of spans;
- g. Length of each span;
- h. Load rating;
- i. Clearances;
- j. Height;
- k. Skew;
- l. Curvature
- m. A description of what is being crossed (e.g., name of body of water, highway or road (including name or number), navigable waterway, etc.);
- n. Whether or not it is a movable bridge; and
- o. Whether or not it is in service.

**REQUEST FOR PRODUCTION NO. 52**

Please produce documents sufficient to show the following information related to the construction or replacement, in part or in whole, of each bridge on Short Line's system in the SARR States from 2004 to the present:

- a. The location of the bridge, by line segment and milepost;
- b. The design for each bridge;
- c. An itemized listing of the bridge components being constructed or replaced (including quantities);

- d. The estimated cost, by component, for each of the components (identified in response to Subpart c. above) being constructed or replaced;
- e. The actual cost, by component, for each of the components (identified in response to Subpart c. above) being constructed or replaced;
- f. The total cost of the bridge;
- g. The total length of the bridge;
- h. Whether the project was new construction or rehabilitation;
- i. Whether or not the project was performed "under traffic", i.e., traffic continued to move through the construction area;
- j. All costs incurred as a function of performing the project under traffic, e.g., flagging costs, temporary signal costs, realignments, delays and all other costs that would not be incurred if the bridge was new construction;
- k. The construction documents and contracts for the construction and/or rehabilitation; and
- l. Any cost sharing between Short Line and another entity.

**REQUEST FOR PRODUCTION NO. 53**

Please produce documents listing the items, the cost of each item and the quantity of each item installed on Short Line's system related to the construction and (during each of the years 2007 to the present) operation of the centralized traffic control signal system(s) or any other traffic control system in use on the Short Line system. Please indicate whether the costs include additional services such as installation, design

planning, electrical drops for utilities, and/or transportation. If the costs for additional services are not included, please provide each cost separately for the additional services.

**REQUEST FOR PRODUCTION NO. 54**

Please produce documents containing the following information for each Short Line communications site (defined as a location with a microwave tower, a land mobile radio ("LMR") tower, a tower used for both purposes, or a location where communications equipment (microwave or LMR) is located that does not include a tower) located in the SARR States:

- a. The number of microwave towers, LMR towers, combined towers, or other communications equipment location (shown separately for each category);
- b. The latitude and longitude coordinates of each tower or other communications equipment location;
- c. The height of each tower in feet above the ground and also in feet above sea level;
- d. The number of microwave antennae on each tower and the status of each antenna (i.e., whether it is operational);
- e. The number of LMR antennae on each tower and the status of each antenna (i.e., whether it is operational);
- f. The latitude and longitude coordinates of other communications sites that can link via microwave or radio from this site or a topological map of the communication system; and
- g. The acres of land owned or leased by Short Line for these sites and the cost of purchase or lease.

**REQUEST FOR PRODUCTION NO. 55**

**Please produce documents sufficient to show:**

- a. Short Line's specifications for the construction of communications sites (as defined in Request for Production No. 54 above);**
- b. Identification and total number of Short Line route miles in the SARR States that are covered by microwave communications;**
- c. Identification and total number of Short Line route miles in the SARR States that are not covered by microwave communications;**
- d. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the microwave radio and/or land mobile radio communications system on the Short Line system during each of the years 2007 to the present; and**
- e. The annual spot maintenance costs incurred by Short Line for the microwave and/or land mobile radio tower communications system per tower and by device type, in the SARR States, as well as the overall spot maintenance costs system-wide.**

**REQUEST FOR PRODUCTION NO. 56**

**Please produce documents in a computer readable format, to the extent available, containing the following information for each Short Line at-grade and grade-separated highway crossing on the Short Line system in the SARR States:**

- a. Geographic location, *i.e.*, city, county and state;**
- b. Rail location, *i.e.*, railroad, line name, division, subdivision and milepost;**
- c. Whether public or private;**
- d. Name of road being crossed;**

- e. Width;
- f. Length;
- g. Type of construction;
- h. Number of tracks;
- i. Type of protective devices;
- j. Date of initial installation at the location;
- k. Total cost of the initial installation and the amount borne by Short Line, if any; and
- l. Identification of the party responsible for ongoing maintenance of any such structures.

**REQUEST FOR PRODUCTION NO. 57**

For each year 2007 to the present, please produce documents that contain the following information with regard to the Short Line system's highway and at-grade railroad crossings:

- a. The various sizes, compositions and costs per linear foot (installed) of a one-lane private road crossing over a single line of track;
- b. The various sizes, compositions and costs per linear foot (installed) of a two-lane public highway crossing over a single line of track;
- c. The various sizes, compositions and costs per linear foot (installed) of a four-lane public highway crossing over a single line of track;
- d. The installed cost of signs for a private road crossing (if necessary);



- e. The installed cost of signs for a public highway crossing;
- f. The installed cost of each of the different types of protective devices identified in the response to Subpart (i) of Request For Production No. 56;
- g. A list identifying each component required for an automatic type interlocking (assuming a diamond crossing);
- h. The cost of each of the components identified in response to Subpart (g) above and the cost of installation for each year or partial year 2007 to the present;
- i. The costs for a 16-foot and 24-foot cattle guard and the cost of installation for each year or partial year 2007 to the present; and
- j. Any additional costs incurred.

#### **REQUEST FOR PRODUCTION NO. 58**

For each highway crossing identified in response to Request for Production No. 56, please provide documents, for each year or partial year 2007 to the present, that show separately for each crossing, any monies received by Short Line from any other party to compensate Short Line for the use of the crossing, including, but not limited to, monies for construction, maintenance and easement payments.

#### **REQUEST FOR PRODUCTION NO. 59**

Please produce documents containing the following information with regard to Short Line's hot bearing and dragging/failed equipment detectors ("FED"):

- a. The criteria for determining the appropriate spacing of the devices along Short Line's main lines;

- b. The location of FEDs for the portion of Short Line's system in the SARR States; and
- c. The cost of FEDs for each year 2007 to the present.

**REQUEST FOR PRODUCTION NO. 60**

Please produce documents sufficient to describe the specifications, functions, operation and costs, during each of the years 2007 to the present, of any communications system equipment other than microwave towers used to transmit data from devices such as mobile two-way radios, portable (hand-held) two-way radios, FEDs, AEI scanners and EOTDs across all or any part of the Short Line system.

**REQUEST FOR PRODUCTION NO. 61**

Please provide documents identifying each electrical connection in the SARR States that is used to provide power to devices including, but not limited to, the CTC system and other signal devices, hot box detectors, failed equipment detectors, powered road crossings, warning devices and power switches, and provide the following for each such connection:

- a. The location of the connection by line segment and milepost;
- b. The source of the electricity;
- c. The amount Short Line paid for each connection and the date; and
- d. Short Line costs for each billing period from 2008 to the present.

### **REQUEST FOR PRODUCTION NO. 62**

Please produce documents sufficient to show the location, linear feet, and type of fencing (*e.g.*, snow fence), cost per foot and year installed for all fencing currently in place on the portion of the Short Line system in the SARR States.

### **REQUEST FOR PRODUCTION NO. 63**

Please provide the following Short Line Geographic/Geospatial Information System (GIS) data. The ("GIS") data should be viewable, readable, and writable with no access limitations. The GIS data should be able to be read using current off the shelf (COTS) software, using either ESRI ArcView (ArcGIS) or MapInfo Pro (MapInfo / PitneyBowes):

- a. Map Projections defined per layer;
- b. GIS files associated with and/or created by the GIS software system, to include:
  1. In their original vector, or other, file format to include file types such as:  
For ESRI application software:
    - a) .shp (shape files, feature geometry)
    - b) .shx (shape file indexes)
    - c) .dbf (attribute format)
    - d) .prj (projection format)
    - e) .sbn, .sbx (spatial indexes of features)
    - f) .fbn, .fbx (spatial index of features)
    - g) .ixs (geocoding indexes)
    - h) .mxs (geocoding indexes)

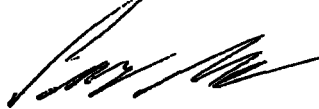
- i) .atx (attribute index)
    - j) .shp.xml (metadata in xml)
    - k) .cpg (code page)
  - 2. For MapInfo application software:
    - a) .dat (attribute data)
    - b) .tab (MapInfo table, stores types of data)
    - c) .id (stores links to graphic and database information)
    - d) .map (stores graphic and geographic information)
    - e) .ind (index files)
  - 3. For other GIS systems: provide native files.
- c. Map data geocoded to a standard available coordinate system;
  - d. Map data associated to latitude and longitude coordinates without limits placed on decimal accuracy; and
  - e. Map Layers (either separate object layers, or in layers with each object having attributes defining the item's entity type and attributes)
- 1. Track detail
    - a) Rail stations and/or nodes (an entity with all attributes)
    - b) Rail segments and/or links between nodes (an entity with all attributes )
    - c) Siding (an entity with all attributes )
    - d) Grade (an entity, or attributes associated to track)
    - e) Curves (an entity, or attributes associated to track)
    - f) Mileposts (an entity, with a unique identifier, milepost name, milepost code, latitude and longitude coordinates with no limits on geocoded coordinate decimal values) that match the mileposts in the transactional "Event" data provided in response to Request For Production Nos. 9 and 10
  - 2. Mileage between track nodes;
  - 3. Land parcels; and

4. Terminals (including, but not limited to, rail yards and bulk transfer facilities).

**REQUEST FOR PRODUCTION NO. 64**

Please produce all documents related to Short Line's responses to the Requests for Admission, Interrogatories, and/or Requests for Production. Include all documents referred to, relied upon, or consulted in preparing Short Line's responses to the Requests for Admission, Interrogatories, and/or Requests for Production.

**TOTAL PETROCHEMICALS USA, INC.**



By: Jeffrey O. Moreno  
David E. Benz  
Thompson Hine LLP  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 331-8800

Dated: October 4, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that this 4th day of October 2010, I served a copy of the foregoing upon defendants in the following manner and at the addresses below:

**Via overnight express delivery to:**

<b>Lamont Jones, General Manager Carolina Piedmont Division 268 E. Main Street Laurens, SC 29360</b>	<b>Cathy S. Hale, Chief Executive Officer Madison Railroad City of Madison Port Authority 1121 W. JPG Woodfill Road #216 Madison, IN 47250</b>
<b>Jeff Collins, General Manager Mohawk, Adirondack &amp; Northern Railroad Corp. 1 Mill Street, Suite 101 Batavia, NY 14020</b>	<b>William J. Drunsic, President Nashville and Eastern Railroad Corp. 514 Knoxville Avenue Lebanon, TN 37087</b>
<b>Bernard M. Reagan, Senior Vice President Seminole Gulf Railway L.P. 900 W.C. Owens Avenue Clewiston, FL 33440</b>	<b>Lucinda K. Butler, Director South Branch Valley Railroad 120 Water Plant Drive Moorefield, WV 26836</b>
<b>G.R. Abernathy, President Sequatchie Valley Railroad Company 120 Souland Square Bridgeport, AL 35740</b>	<b>Paul G. Nichini, President New Hope &amp; Ivyland Railroad 32 West Bridge Street New Hope, PA 18938</b>

**Via facsimile and U.S. first-class mail to:**

Joe Martin, Division Manager R.J. Corman Railroad Company (Memphis) P.O. Box 337 145 East 1st Street Guthrie, KY 42234  fax 270.483.9009	Michael L. Rennie, General Manager Pioneer Valley Railroad P.O. Box 995 Westfield, MA 01086  fax 413.568.3331
Thomas Burden, General Manager Georgia Woodlands Railroad, LLC 210 Depot Street P.O. Box 549 Washington, GA 30673  fax 706.678.2341	



Jeffrey O. Moreno

BEFORE THE  
SURFACE TRANSPORTATION BOARD

<hr/>		)
TOTAL PETROCHEMICALS USA, INC.		)
		)
Complainant,		)
		)
v.		)
		)
CSX TRANSPORTATION, INC; CAROLINA		)
PIEDMONT DIVISION; GEORGIA		)
WOODLANDS RAILROAD, LLC;		)
MADISON RAILROAD; MOHAWK,		)
ADIRONDACK & NORTHERN RAILROAD		)
CORP.; NASHVILLE AND EASTERN		)
RAILROAD CORP.; NEW HOPE &		)
IVYLAND RAILROAD; PIONEER VALLEY		)
RAILROAD; R.J. CORMAN RAILROAD		)
COMPANY (MEMPHIS); SEMINOLE		)
GULF RAILWAY L.P.; SEQUATCHIE		)
VALLEY RAILROAD COMPANY; AND		)
SOUTH BRANCH VALLEY RAILROAD		)
		)
Defendants.		)
<hr/>		)

Docket No. NOR-42121

VERIFIED STATEMENT OF ALLEN CAST

1. My name is Allen Cast. I am the Manager – T & D Sourcing & Strategy at TOTAL PETROCHEMICALS USA, INC. (“TPI”), TOTAL Plaza, 1201 Louisiana Street, Suite 1800, Houston, Texas 77002.
2. I previously provided testimony to the Surface Transportation Board (“Board” or “STB”) in this proceeding on October 21, 2010 as part of the TPI Reply to the Motion for Expedited Determination of Jurisdiction Over Challenged Rates of CSX Transportation, Inc. (“CSXT”). In that prior testimony, I provided a brief overview of TPI’s business as well as my own role and experience. I will not repeat that overview here.



3. I am submitting this Verified Statement ("V.S.") in support of TPI's Reply to the Motion to Dismiss of New Hope & Ivyland Railroad ("NHRR"), which was filed on December 9, 2010 in this proceeding. The purpose of this V.S. is to (1) provide information about sales to the TPI customer served by CSXT and NHRR in Lane B-42; (2) describe the current transportation agreement between TPI and Canadian National Railway ("CN"); and (3) explain TPI's attempts to enter into a transportation contract with NHRR.

**I. Sales By TPI In Lane B-42**

4. Lane B-42 of this case involves transportation of polystyrene by CSXT and NHRR from Effingham, Illinois to Warminster, Pennsylvania. Effingham is the location of an interchange from CN to CSXT, while Warminster is the site of TPI's customer, {

}.<sup>1</sup> {

} all shipments are destined to { }

Warminster.

5. Traffic on Lane B-42 is interchanged from CSXT to NHRR at Ivyland, Pennsylvania.

6. During the past two years, TPI has shipped { } of polystyrene to { } in Warminster. See Exhibit 1 to this V.S. {

}

7. {

---

<sup>1</sup> Pursuant to the Protective Order in this proceeding, TPI has delineated "CONFIDENTIAL" information by single brackets { }, and "HIGHLY CONFIDENTIAL" information by double brackets {{ }}.

8. {

**II. The Transportation Agreement Between TPI And CN**

9. Polystyrene that is transported to Warminster originates at the TPI Styrenics Complex in Carville, Louisiana. Transportation is on CN from Carville to the interchange with CSXT at Effingham.

10. Movement of TPI's polystyrene from Carville to Effingham is pursuant to a rail transportation agreement between TPI and CN. See Exhibit 2 for a copy of the agreement.

11. The new agreement between TPI and CN has an effective date of July 1, 2010, immediately after the expiration of the prior CSXT contract on June 30, 2010.

12. The TPI-CN rail transportation agreement covers many lanes of transportation, not just the transportation of polystyrene to Effingham. {{

}}

**III. TPI's Attempts To Enter Into A Transportation Contract With NHRR**

13. In September 2010, CSXT informed TPI that NHRR is a line-haul carrier on the Lane B-42 route. Moreover, CSXT stated that NHRR is entirely responsible for its portion of the challenged tariff for Lane B-42, and is completely free to enter into a contract.

**PUBLIC VERSION—CONFIDENTIAL MATERIAL REDACTED**

14. In order to avoid adding NHRR as a defendant, TPI offered to enter into a contract with NHRR for its portion of the movement before TPI filed its Second Amended Complaint.


15. NHRR expressed no interest in a contract, even though TPI made clear that, in the absence of a contract, TPI would have little choice but to join NHRR as a defendant.

16. Since filing the Second Amended Complaint, TPI has emphasized that it remains willing to enter into a contract with NHRR. Yet, NHRR has not been responsive to TPI's invitation to discuss or negotiate a contract. In fact, NHRR has not even offered any rate proposal to TPI.

17. TPI remains ready and willing to discuss a contract with NHRR.

### **VERIFICATION**

I, Allen Cast, verify under penalty of perjury that I have read the foregoing Verified Statement, that I know the contents thereof, and that the same are true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

  
Allen Cast

# **Verified Statement of Allen Cast**

## **Exhibit 1**

**Confidential**

**Redacted**

# **Verified Statement of Allen Cast**

## **Exhibit 2**

**Highly Confidential**

**Redacted** ~



# **Verified Statement of Allen Cast**

## **Exhibit 3**

**Highly Confidential**

**Redacted**